PUBLIC REPORT NO. 29

A COMPLAINT ABOUT THE HANDLING OF A SEXUAL HARASSMENT COMPLAINT BY VANCOUVER COMMUNITY COLLEGE, LANGARA CAMPUS

JULY, 1992

Ombudsman
Fairness for all in British Columbia

OMBUDSMAN

Legislative Assembly
Province of British Columbia

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This matter was referred to the Ombudsman in March, 1992, following a series of events which took place at Vancouver Community College between October, 1991 and March 1992. The incident which formed the basis of the sexual harassment complaint was the publication of an 'unclassified' advertisement in an independent student newspaper, which was published and distributed at Langara campus.

The scope of the Ombudsman's investigation was as follows:

* The office did not investigate the merits of the specific complaint or the adequacy of the punishment which was imposed by the College. Because of this, the report does not make any recommendations which are specific to the case.

* The office examined the adequacy of the procedures which were available to the College at the time of the complaint, and the adequacy of the new procedures for dealing with sexual harassment complaints which were developed recently. The report makes recommendations for improvements to the new policy and procedures.

* In order to assess the procedures and put the investigation into context, the office examined the process used by the College to investigate and deal with this complaint, and whether the procedures in place at the time were followed. The office also examined how the parties involved were affected by the manner in which the complaint was handled.

The report makes the following conclusions:

* In general, the procedures which were in place during this time did not provide an effective way to resolve a sexual harassment complaint.

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* The College administration did not follow its procedures in two significant ways, which are described in detail in the report.

* Despite the general inadequacy of the procedures which were in place, had the College administration followed those procedures properly, it could have resolved this particular dispute in a fair manner.

* The new procedures, which were put into place March 19, 1992 are a welcome improvement. While it is too soon to determine how effective they will be, they are based on sound principles.

The recommendations are summarized at the end of the report. It is hoped that this report will provide useful information to educational institutions who already have or are in the process of developing policies and procedures to deal with harassment and sexual harassment complaints.

Brent Parfitt
Acting Ombudsman

Barbara Fisher
Acting Deputy Ombudsman

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A. INTRODUCTION

Vancouver Community College (the "College") is a post-secondary educational institution which serves approximately 20,000 students on three separate campuses located in Greater Vancouver: Langara, King Edward and City Centre. It provides a wide variety of both technical and academic programs.

The College is an institution designated under the College and Institute Act (the "Act"). It is managed and administered by a board, whose members are appointed by Cabinet. The Minister of Advanced Education, Training and Technology (the "Minister") has powers and duties to

* establish, in consultation with boards, policy or directives for post secondary education and training in the Province,
* provide services he considers necessary to an institution,
* make annual reports to the Legislature about the state of post secondary education and training,
* coordinate continuing education programs, and
* require institutions to submit annual budget proposals.

The Minister also has discretionary powers to, for example:

* allocate and distribute funds,
* establish standards for education, training, operations, administration and management,
* monitor programs,

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* require an institution to provide information and proposals,

* establish committees.

The board has the authority to manage, administer and direct the affairs of the College. This includes, for example, the power to:

* administer funds, grants and fees,

* manage and promote educational training programs,

* determine questions relating to qualifications for admission,

* prepare and submit budgets and other reports required by the Minister,

* make bylaws for the orderly conduct of its affairs, subject to approval by the Minister,

* perform other functions "not inconsistent" with the Act "that the board considers advisable for the proper administration and advancement of the institution".

On Thursday October 3, 1991 an "unclassified" advertisement appeared in "The Gleaner", an independent student newspaper published at the Langara Campus. The Gleaner is funded by Langara campus students through their student union fees. Most of the staff who work at the Gleaner are volunteers.

The advertisement was directed towards a particular female student. It read as follows:

> TO MY ROBUST <name spelled backwards>, sweetness is like melons that hang, more tender is the thorn of thy rose. But, perhaps conquest can be achieved with the pole of my nation. Thrust into the fertile soil.

The controversy which was sparked as a result of the publication of this advertisement was substantial. The female student lodged a complaint. The manner in which the administration at Langara Campus handled it clearly illustrates the need for quick, thorough and fair procedures to deal with sexual harassment issues, particularly in an educational institution.

The controversy culminated on March 5, 1992, with a number of students from the Langara Students Union executive occupying the Principal's office, demanding an investigation into his handling of the complaint and also demanding that the Principal take counselling to educate himself about sexual harassment.

This occupation, or sit-in, was peaceful. There were approximately 15 students in the Principal's office at any one time. The atmosphere was friendly, and no one interfered with College property or records which were kept in that office.

By about 10:30 p.m. the students were advised that the school was closing and they would have to leave. They did not comply. Police officers then arrived, and gave the students another order to leave, after discussing with them the potential consequences of their actions. Many of the students did leave, with the exception of six, who were arrested, taken in a paddy wagon by the police and dropped off in an alley behind the police station without being charged or detained. There were no complaints by the students about the conduct of the police officers and in fact one of the students who was arrested advised us that the police had treated them with respect and courtesy at all times.

On March 6, 1992 the Minister had two meetings, the first with a group of ten of the students who had attended the occupation of the Principal's office and the second with the Vancouver Community College President. Subsequent to those meetings, the College, through the President, requested an independent review by the Ombudsman. The scope of the investigation, as determined by this office, was as follows:

1. We did not investigate the merits of the specific complaint of sexual harassment, or the adequacy of the punishment which was imposed by the College on the respondents.

2. We examined the adequacy of the grievance and discipline procedures which were available to the College at the time of the complaint, and the adequacy of the new procedures for dealing with sexual harassment complaints which were developed recently.

3. In order to assess the procedures and put the investigation into context, we examined the process used by the College to investigate and deal with this specific complaint, and whether the procedures in place at the time were followed. We also examined how the parties involved were affected by the manner in which the complaint was handled.

Where the Ombudsman finds that there may be sufficient grounds for making a report or recommendation which may adversely affect an authority (such as the College) or person (such as a complainant or respondent), the Ombudsman Act requires the Ombudsman to inform them of this and to give them an opportunity to make representations before the report or recommendations are finalized. Prior to the publication of this report, our findings and proposed recommendations were reviewed by the College administration and the other parties adversely affected, and we carefully considered all submissions and representations received.

B. POLICIES AND PROCEDURES IN PLACE FROM SEPTEMBER 1991 TO MARCH 1992

Vancouver Community College has been reviewing issues of sexual harassment since approximately 1988, when it formed a harassment policy committee. This committee prepared a report and recommendations, which were received by the College in September, 1989. This led to the development of a harassment policy which became effective November 13, 1990.

This policy stated that the College was committed to the principle that all members of the College community had the right to work and study in an environment which was free from harassment. It stated that the College did not condone and would not tolerate behaviour which was likely to undermine the dignity, self-esteem and productivity of any student or employee. It considered harassment of any kind to be a serious violation of an individual's fundamental rights and therefore a serious offence, which could be subject to a range of disciplinary measures up to and including dismissal or expulsion.

The policy defined harassment as follows:-

a. Harassment, for the purposes of this policy is behaviour which is both

   i. discriminatory in nature based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, political belief, disability, or conviction of a criminal offence; and

   ii. objectional behaviour -- verbal, physical, or by innuendo -- on the part of a person who knows or who ought reasonably to know that the behaviour would create an environment unconducive to work or study.

   Harassment may occur during one incident or over a series of incidents any one of which, in isolation, would not necessarily constitute harassment.

   Without limiting the generality of the preceding paragraph, examples of harassment include:

i. verbal abuse or threats;

ii. offensive remarks, jokes, innuendoes, or taunting;

iii. display of pornographic, racist, or other offensive or derogatory material;

iv. persistent unwelcome invitations or requests, whether direct or indirect;

v. unwelcome physical contact such as touching, patting, pinching, or punching.

b. Sexual harassment is a specific type of harassment which places objectionable emphasis on the sex of an individual. It is defined as unwanted sexual attention, sexual solicitation, or other sexually oriented remarks or behaviour made by a person who knows or ought reasonably to know that such attention or solicitation is unwanted; and without limiting the foregoing, includes:

i. the implied or expressed promise or reward with respect to a term or terms of employment, academic status, or academic credit, for complying with a sexually oriented request; or

ii. reprisal or an implied or expressed threat of reprisal with respect to a term or terms of employment, academic status, or academic credit for refusing to comply with a sexually oriented request; or

iii. the denial of opportunity or the threat to deny opportunity with respect to a term or terms of employment, academic status, or academic credit for refusing to comply with a sexually oriented request; or

iv. unwanted sexual attention or solicitation which has the effect of interfering with an individual's

> work or academic performance, or which creates an environment unconducive to work or study.

Under this policy, there were no procedures outlined to deal with harassment complaints. The only procedures available to the administration were contained in the Student Grievance Procedures (effective May 6, 1981). These were established to provide individual students the opportunity to register and resolve grievances or disputes. It appears that these procedures were not designed to deal with disputes between students and that their focus was to deal with students' grievances against faculty, staff or administration. A copy of the Grievance Procedures is attached as Appendix A. They may be summarised as follows.

1. A complaint by a student was to be made to the Dean of Administrative and Student Services (the "Dean"), provided other specific appeal procedures did not apply.

2. The Dean was required to advise the student that he or she had the option to present the complaint to another administrator on campus (not including the Principal), because the Dean could be involved in a later review of the complaint.

3. The Dean or another campus administrator if chosen by the student, was required to receive the complaint and within one week from the date he or she was first advised of it, become familiar with the details, attempt to resolve it and report the existence of the complaint to the Principal.

4. Only where the complaint was against the Dean, was the Principal entitled to act under steps 1, 2 and 3.

5. Where the complaint could not be resolved, the Dean was required to strike a committee consisting of an instructor recommended by the Association of Instructors, a counsellor named by the Counselling Department and a student recommended by the Students Society of the campus. Where one party was unable to name a representative, the Principal could make the committee appointment. This committee was required to review the matter and decide all questions of procedure, with the following guidelines:

    a. the complainant had the right to appear before the committee to make submissions;

    b. the person (or persons) against whom the complaint was made (the "respondent") had the right to appear before the committee to make submissions;

    c. each party was entitled to have witnesses appear on his or her behalf;

d. each party was permitted to be represented by one advisor who was either a college student or college employee;

e. the committee could request the presence of any resource person or witness whom they thought appropriate.

6. The Chair of the committee was required to advise the Principal of the committee's recommendation in a written report.

7. The committee was required to "commit their best efforts" to complete the hearing process within a period of three weeks.

8. Within one week of receiving the committee's recommendations, the Principal was required to make a decision and communicate it in writing to the complainant and the respondents. The Principal's decision could be reviewed by the President and subsequently by the College Board if either of the parties requested it.

The College was obliged to make the existence of the procedures known to students through appropriate college publications. The policy stated that the procedure was provided "to deal with any grievances or disputes concerning human rights, e.g., allegations of sexual harassment, racial or religious discrimination".

The authority to initiate disciplinary action by the College is contained in the Act and in the Standards of Student Conduct Policy and Procedure (effective June 29, 1981). Under the Act, the principal of an institution may, for just cause, suspend a student and deal summarily with a matter of student discipline. The principal is required to report a suspension, with reasons, to the board of the College, and a person suspended has a right of appeal to the board.

Under the Standards of Student Conduct Policy and Procedure, the failure by students to maintain appropriate standards of conduct can result in the initiation of disciplinary action by the College President or his delegate, the Dean. This power can also be delegated by the Dean to another administrator. The Dean or his or her delegate can impose the following discipline:

a. a reprimand;

b. suspension from class for a period of not more than two weeks;

c. referral to College President for expulsion;

d. withholding official transcripts until a debt is paid.

Students have the opportunity to appeal a suspension or expulsion

by means of the Student Grievance Procedures. A copy of the Standards of Student Conduct Policy is attached as Appendix B.

On March 19, 1992 the Vancouver Community College Board passed a new set of procedures to deal specifically with harassment and sexual harassment complaints. We will review those procedures later in this report.

C. THE COMPLAINT AND HOW IT WAS HANDLED

This office interviewed all of the parties who were directly involved in this complaint, in order to provide a context for our investigation. We will summarize how the complaint was dealt with by the College administration and what actions were taken by parties directly and indirectly involved.

However, two observations should be made at the outset. First, we have not dealt with the merits of the complaint; we have examined the process by which it was handled. This is why we have not made any recommendations specific to the case in this report. Our comments should not interpreted to mean that the complaint was not justified.

Second, each person involved in the dispute felt that he or she had been unfairly treated. Each had a different version of the events. Under the Grievance Procedures, the Dean was to try to resolve the complaint. If this could not be achieved, she was to strike a committee to hear the matter and make a recommendation to the Principal, who would decide the issue. This never occurred. For reasons which follow, we have concluded that a 'resolution' never took place, and therefore the matter should have been referred to a committee for a hearing.

The "complainant" was a female student against whom the unclassified advertisement was directed. The "respondents" were two male students who admitted that they had been involved in writing the material.

The complainant was understandably distressed when she read the advertisement. Within a few days she was told, by other members of the Gleaner staff, who was responsible for its creation and publication.

The complainant first met with the Dean during the week of October 7, 1991, to discuss her complaint. The Dean advised her that the College had procedures to deal with this type of incident and that she would look into it. At that time the Dean did not provide the complainant with a copy of the Student Grievance Procedures, nor did she explain the procedures to her. The complainant said that she did not know that the College had a harassment policy, and she did not know about the grievance procedures which were in effect.

The Dean advised us that the purpose of this first meeting was to allow the complainant to talk about the issues. She did not feel that it was appropriate to discuss specific procedures at that stage. The Dean asked the complainant if she had any suggestions for remedies. The complainant made a number of suggestions: that the respondents be responsible to pay for counselling for her as a result of the harassment; that she have an opportunity to explain to them how their behaviour had made her feel; that they attend a meeting at the Rape Relief Centre in order to learn about the effects of sexual harassment; that they be expelled from the College.

The Dean said that at this initial meeting she advised the complainant that counselling services were available to her at the College. The complainant agreed that the services of a campus psychologist were offered to her on an emergency basis. However, she said that she was unable to get an appointment to see the psychologist for six weeks. (After that time, she was no longer a student, and she was not comfortable going to counselling sessions at the College).

During the week of October 7, 1991 the Dean met individually with each respondent and several members of the Gleaner staff. On October 8, 1991, the complainant, who was a candidate in the upcoming provincial election, discussed the matter publicly at an all-candidates meeting.

On October 11, the Dean advised the Principal of the complaint. She asked him to interview the parties and perhaps some of the witnesses. In fact, one of the respondents had already approached the Principal about the matter. The Dean was concerned that the complaint had been publicly disclosed, and she wanted a second opinion because she thought it was a difficult case. She advised us that she was attempting to resolve the dispute under section B.3 of the Student Grievance Procedures.

The Principal agreed, and he interviewed the two respondents, a witness and the complainant over the course of the following week.

The Principal's meeting with the complainant was on October 17. He advised her that she was required to file a written complaint in order for the College to be able to discipline the respondents. Until this interview, the complainant did not know about the Student Grievance Procedures. (She said that she received a copy of the Grievance Procedures on or about October 25).

The complainant filed a written complaint on October 21, 1991. Meanwhile, the Dean and the Principal made a tentative decision about discipline, which they hoped would be agreed to by the parties.

The complainant met with the Dean and the Principal on October 25.

By this time she was becoming more and more upset. She advised them that because of the publication of the ad and the fact that the matter was well known on campus, she was being continually harassed at the College. She said she was receiving anonymous threats in the halls, by telephone and one person had left a note in her bag on the subject of rape. She said she gave the note to the Principal.

The Dean and the Principal advised us that they outlined their proposed discipline with the complainant. They said that she did not appear to agree that it was appropriate, but that she wanted to think it over. They were not optimistic that she would agree with their 'resolution'.

The complainant said that they did not discuss it as proposed discipline; they told her what the discipline was going to be. She said that she was not advised that she would have an opportunity to respond in writing.

The Principal wrote to the complainant on October 30, outlining the resolution: A strong disciplinary letter was to be placed on the files of both respondents. They would be informed that their actions had been completely unacceptable and should they be involved in any similar circumstances in the future the College would impose severe disciplinary action. They would also be told to write a personal letter of apology and finally, they would be required to attend a number of sessions offered by rape relief agencies or any other relevant group that the complainant might suggest. The intention of the sessions was to increase the respondents' sensitivity to their behaviour and how it affected women in particular. (This was later modified to a requirement that each respondent attend five counselling sessions with a counsellor chosen by the College). The Principal advised the complainant that should this suggested discipline not be acceptable to her, she was to let him know by November 6.

The complainant advised us that she received this letter on either November 2 or 3.

The Principal did not receive her response by November 6. On the morning of November 7, the Principal and the Dean met with each respondent separately to discuss the discipline, as outlined in the Principal's letter of October 30 to the complainant. Because both respondents had apparently agreed, and because they had not received a response from the complainant, the Dean and the Principal thought that a resolution had been reached under section B.3 of the Grievance Procedures.

Later on November 7, the Principal received a letter from the complainant indicating that she was unhappy with the discipline which the College intended to impose on the respondents. She disagreed with the requirement that the respondents attend sessions

offered by rape relief agencies. It was her view that one could not force a person to change his or her views in this way; if the respondents were willing to change, they would seek counselling on their own. The proposal was not 'real punishment' and she was very concerned that it would have no deterrent effect. She wanted compensation from the respondents, as well as a signed confession. She also expressed her opinion that there should be emergency counselling available to women on campus.

The following day, November 8, the Principal, the Dean, the new College President, the Acting President and a Labour Relations Officer met to discuss the College's options. They felt they could either treat the matter as resolved, since they had received the complainant's letter after they had advised the respondents of the discipline to be imposed; or they could change the discipline. They decided that they could not change the discipline, since it had been communicated to both respondents and to the complainant.

On November 18, 1991, the Principal wrote to the complainant advising her that the decision of October 30 had been confirmed and in his view the matter had been resolved satisfactorily. The next day he wrote to each respondent, confirming the 'resolution' of the complaint, including a direction to attend a series of counselling sessions instead of sessions run by a rape relief agency.

In late November, posters appeared around the campus which included the names of both respondents, identifying them as the authors of the ad, and characterizing it as a rape threat. The complainant advised us that she was not responsible for these posters. On the administration's direction, the posters were taken down.

Meanwhile, the media had become aware of the situation and were interested in the problem. The complainant made initial contacts with the media, and continued to inform a Vancouver Sun reporter of the progress of the matter. Further, a group of women students on what was known as the 'Womyn's Steering Committee' also contacted media representatives directly. This committee was connected to the Langara Students Union, but consisted of unelected members who were interested in women's issues. Some of the women on the Womyn's Steering Committee were also elected members of the Langara Students Union and members of the executive.

On November 28, 1991 an article appeared in the Vancouver Sun which reviewed the history of the complaint and the procedures used by the College. The Principal was quoted as saying that a grievance committee had been appointed to look into the complaint against the two respondents and that the committee's result would not be known for at least a week. The complainant advised us that she was told the same thing. The Principal advised us that he considered the report to be inaccurate. The article also indicated that the Minister had said that he would look into the case to see what the Ministry could do to help.

Prior to this time, the complainant had dropped several of her courses at Langara. She told us that on the same day this article appeared, she dropped the balance of her courses, because she was under tremendous stress. She also told us that by this time, she felt that she had become an adversary and was being punished by the College administration for speaking out.

On December 4, 1991, 50 women from the College took part in an information and demonstration parade which concluded in the Principal's office. The complainant took part in this. The women wanted some action taken on how the College was going to deal with sexual harassment. They demanded that the College hire a sexual harassment officer, that the College contribute funds to an organization committed to ending violence against women, and that a written apology be provided to the complainant. They advised the Principal that they did not feel safe on the campus. They wanted to know what he was going to do about this particular case, since the two respondents were attending classes and they were concerned about how the College was handling the matter.

The Minister was also beginning to receive calls from members of the Students Union through his constituency office in Vancouver. Accordingly, he called a meeting at Langara Campus in early December 1991. He wanted representatives from the College administration, the Students Union and the Faculty Association to attend. His purpose was to hear how each group was approaching the issue and to express his concern that sexual harassment was a serious matter. The Minister did not want to become involved in the actual complaint, so the complainant was neither informed of nor invited to the meeting. It was his view that the individual case was a matter which should be dealt with by the College administration.

The Minister attended with an assistant. The College President, the Principal and the Dean attended the meeting on behalf of the administration. While the Minister had requested one student representative from the Students Union, four from the Womyn's Steering Committee attended instead.

The Minister advised us that he was less interested in punishment and more interested in education. He suggested the College review sexual harassment policies adopted in other universities. He encouraged the College administration to take a joint approach with student representatives and offered the Ministry's assistance if necessary.

There was some discussion at this meeting about limitations on the College in respect of punishment. They discussed the issue of double jeopardy. Because the two respondents had already been punished, the College was of the view that they could not punish them again.

The meeting continued for some time after the Minister left. His assistant stayed for the entire meeting. There was a discussion about what the College could do if the respondents did not comply with the discipline imposed. The four students were told that the ultimate punishment was 'dismissal'. There was further discussion about the general handling of sexual harassment complaints; the students wanted to be involved in developing new procedures.

On December 9, 1991, the Principal wrote to each respondent, directing them to attend five counselling sessions and to contact a specified psychologist by December 13. The counselling sessions were to be completed by January 31, 1992. The cost of the sessions was to be paid by the College, and attendance was mandatory. Their failure to comply with these directions would result in further action being taken for non-compliance with discipline.

The first respondent advised us that he did not receive this letter until early January, 1992. The Dean advised us that on December 13 she informally met with this respondent and told him that a letter had been sent to him through his lawyer, which required action that day. She suggested that he either call his lawyer immediately or pick up a copy of the letter from the administration office.

On December 17, 1991 the Principal wrote to the first respondent again. In this letter, the Principal said that because his earlier directions had not been complied with, the respondent was to be suspended from the College for a period of two weeks commencing January 7, 1992. Further, if he did not contact the counsellor and schedule the five sessions by January 20, and complete the sessions by February 21, he would be expelled. This respondent also said that he did not receive this letter until early January.

On January 3, 1992, when the first respondent attended Langara campus to register for the next semester, he was given copies of the letters of December 9 and December 17. On January 6, 1992, he retained a new lawyer, who wrote to the College. The lawyer wanted the College to review the disciplinary action taken against his client in light of the fact that he said he had not received the December letters.

Subsequently, an agreement was reached between the first respondent and the College. He agreed to attend the counselling sessions, a confirmation of attendance and reprimand letter would form part of his file, and the file would be treated in accordance with existing College records policy. That policy provided that the content of student files and records would only be disclosed at the request of the student or by court order. This respondent was concerned that there should be no report of the counselling sessions and that this matter would be treated confidentially. The counselling was to be completed by January 31, 1992.

Meanwhile, the second respondent attended the five counselling sessions.

However, neither respondent wrote a letter of apology to the complainant. (The first respondent had earlier posted an "explanation", but it was not considered, by him or by the complainant, to be an apology). By this time, both respondents were angry because the matter had been reported in the media and their names had been published. The College took the position that they had advised the respondents to apologise, but they could not force them to do so, because of the provisions of the Canadian Charter of Rights and Freedoms.

On January 15, 1992 an open letter from the Principal to all students was published in the Gleaner and another student newspaper, the Voice. This letter, dated December 6, 1991, had been posted throughout the campus in mid-December. The subject of the letter concerned harassment. The Principal outlined the actions the College had taken against the two respondents in this case, without naming them. A copy of this letter is attached as Appendix C.

The publication of this letter sparked further controversy. The complainant's view was that some of the statements made by the Principal implied that her complaint was not substantiated. The Womyn's Steering Committee was also dissatisfied with its contents, for similar reasons. The first respondent took the position that the publication of this letter had breached the confidentiality terms of his agreement with the College. On the advice of his counsel, he refused to comply with the discipline and did not attend any counselling sessions. On February 3, 1992 the Principal wrote to him advising that he would be suspended for two weeks commencing February 5 for his failure to comply with the discipline. The respondent decided to appeal the suspension under the Student Grievance Procedures. As a result of the appeal, his suspension was put in abeyance pending its outcome. This appeal was handled by the appointment of a committee in accordance with section B.5 of the Grievance Procedures. It was agreed between counsel that the scope of the appeal would be limited first to a determination of whether or not the terms of the agreement had been breached by the publication of the Principal's open letter. If it was determined that there was a breach, then there would be a full appeal on the merits; otherwise the matter would be concluded.

On February 17, 1992 the Langara Students Union voted to demand the resignation of the Principal.

On March 5, 1992, the complainant and her lawyer met with the Principal and the College's lawyer, at the complainant's request. The complainant told us that she wanted to meet with the Principal because she thought the Minister would not assist her unless she did so. She wanted to know why certain procedures had not been

followed and she wanted to know if she was entitled to appeal. The Principal told us that the complainant wanted to know why she had not been informed of the status of her complaint and that she was interested in the development of proper procedures. The Principal said that he offered to assist her to pursue her studies in another institution, if she chose to do this. The complainant said that this offer was not made to her.

Later on March 5, 1992, the occupation of the Principal's office took place. This occupation was planned and carried out by the members of the Langara Students Union executive and the Womyn's Steering Committee. The complainant was not involved in the planning of this event, but representatives from the Students Union executive had contacted her in advance to seek her views, and she advised them that she had no objection.

The complainant said she was at the Principal's office late in the evening, at approximately 10:00 p.m., but she did not attend to participate in the occupation. She said that she had come to the office to pick up a package from one of the students, and left when asked to do so by the police.

At the sit-in, the students made two specific demands:

1. they wanted an internal committee appointed to review the procedures taken by the administration in respect of this complaint, and

2. they wanted the Principal to receive five hours of counselling.

The students were concerned that one respondent had not complied with the discipline and they felt that the administration had been dishonest with them in advising that non-compliance would result in expulsion. The students only knew that this respondent was still attending classes and that he had not attended the counselling sessions. This respondent said he was angry because all of these matters were known publicly, and this was one of the reasons that he refused to attend the sessions. It is not clear if the students knew about the respondent's appeal and of the process involved when an appeal has been launched. The Principal said that the students were told that an appeal was in process, but he did not discuss any details. It was the College's view that this would have been inappropriate while the appeal was progressing.

The Principal said that he was prepared to consider the students' demands. He sought advice from the College President and legal counsel. He told the students that an internal review would not be possible because the complainant had recently announced her intention to file a complaint with the B.C. Council of Human

Rights. However, he agreed to take counselling sessions for the purpose of discussing how to deal with sexual harassment complaints.

The Principal left his office at approximately 3:30 p.m. He arranged for the Dean of Instruction to be present with the students and to generally supervise. He then met with the College President, the Chair of the College Board, and the College's lawyer. At this meeting, they discussed three options which they felt were available in the circumstances:

1. they could leave the students to continue indefinitely, allow them free access in and out of the Principal's office, and keep a chaperon or supervisor there at all times;

2. they could close access into the Principal's office, leaving the remaining students the option to leave, if they had a sufficient number of experienced security people available;

3. they could leave the students to continue until the campus closed that evening, then ask them to leave, and if they refused, then they would seek the assistance of the police.

They were concerned about further media attention, and they thought that the first option would continue that process. They were also concerned that there would not be sufficient protection of confidential files which were located in unlocked drawers in the Principal's office (although we were advised by one of the students that the Dean of Instruction had locked some drawers). The Principal advised us that they were not able to obtain enough experienced security people to carry through with the second option. Therefore, they agreed that the third option would be most effective.

The Principal met with the police officers before he returned to the campus, and received advice and instructions about how to handle the situation. The Principal advised us that the College never intended to lay charges against the students, and that this was discussed in advance with the police.

At about 10:30 p.m., the Dean of Instruction asked the students to leave. They refused. Then the Principal returned to his office and asked them to leave. They refused again. Finally a number of police officers attended. One officer talked to the students about the potential consequences of their actions, and explained the procedures involved if they were to be arrested. About one-half of the students decided to leave voluntarily. The remaining six students were arrested. However, no charges were ever laid and no discipline was ever imposed on them by the College.

The day after the sit-in, March 6, 1992, the Minister held two meetings. The first meeting was with a group of about ten of the students who had been involved in the sit-in. They had requested an emergency meeting. The complainant did not attend. The Minister wanted to know what had happened from the students' point of view. He was very concerned about what he viewed as the heavy handed approach which had been taken by the College in calling in the police. The students told him that they had no complaints about the conduct of the police. They also told him that the atmosphere during the sit-in was friendly and no one had looked into any College records or interfered with College property.

The Minister then had a meeting with the College President. He expressed his concerns about the use of the police in these circumstances. It was his view that he was ultimately accountable for these actions and therefore should have had notice about it and perhaps the College could have called him for advice. The College was of the view that it was responsible for making this decision and it had no obligation to notify the Minister.

The Minister told us that if he had been consulted, he might have advised the College to employ a chaperon to stay with the students during the night if necessary, on the understanding that the sit-in was friendly and that there had been no tampering with College property.

The Principal had earlier agreed to attend a press conference, which had been scheduled to take place at the same time that the President met with the Minister. Before both meetings, the President and the Principal agreed that the conference should go ahead.

The President took the position, subsequent to his meeting, that the College would be taking no disciplinary action against the students involved in the sit-in. However, the Principal had not entirely ruled this out, and the media reported him to have said that the students could be facing serious disciplinary action.

Shortly after March 6, the College contacted the Ombudsman's office requesting a review.

On March 13, 1992 the first respondent's appeal was heard by a committee, under the terms of the Student Grievance Procedures. Two members of the Womyn's Steering Committee, who had been recently elected members of the Langara Students Union, attended as the one student representative on the committee. Both of these students had been actively involved in the student protest, and one had written to the editor of the student newspaper on this very issue. The respondent's counsel objected that one of the students was not impartial. Accordingly, she agreed to step down as a committee member, but the other remained as the student representative. No objection was taken to her participation.

The appeal was denied. The Committee found that the College had not violated the spirit of the agreement concerning disclosure when the Principal had issued his open letter to the students.

This decision was appealed to the College board. A hearing was held on March 31, 1992. Counsel for the respondent argued that the board had an opportunity before it to sort out the general manner in which this complaint had been handled. While the narrow legal point which was under review involved the agreement between the respondent and the College, it was submitted that this dispute had caused so many problems that the board should consider the entire matter. The College took the position that the board should only be dealing with the matter which was involved in the appeal, and that was whether or not the agreement had been breached. However, counsel for the College advised the board that it could consider the whole matter if it wished.

The Board agreed that the scope of the appeal should be restricted. It held that the agreement had not been breached by the College. On April 1, 1992 the President wrote to the respondent's counsel advising that his client's suspension would commence April 2, 1992. As a result of the suspension, the respondent was unable to write any of his examinations.

On April 2, 1992 the complainant filed a complaint against the College with the B.C. Council of Human Rights.

D. THE ISSUES RAISED IN OUR INVESTIGATION

1. Did the Langara administration investigate and resolve the complaint in accordance with the Student Grievance Procedures in effect at the time?

2. What was the effect of the College's actions on the parties involved in the complaint and on the campus population in general?

3. Did the Student Grievance Procedures provide an effective way to resolve a sexual harassment complaint?

4. Will the new procedures adopted by the board March 19, 1992 be more effective to deal with sexual harassment complaints?

1. Did the Langara administration follow the Student Grievance Procedures?

We have concluded that the College administration did not follow its own procedures.

First, the Principal should not have been involved in the initial attempts to resolve the dispute. Second, a resolution was not achieved, and the matter should have been heard by a committee.

The first steps of the Student Grievance Procedure are for the Dean to investigate the matter and attempt to resolve it, under section B.3. Only the fact that a complaint has been made is to be reported to the Principal. The Principal is excluded from this process because of his potential involvement in a subsequent review: after a complaint has been referred to a committee, he makes the actual decision, based upon the committee's recommendation.

Instead, the Principal became involved in the initial attempts to achieve a resolution. He conducted interviews and reached a conclusion which he believed to have resolved the matter.

Where a complaint cannot be resolved, the Dean is required to strike a committee under section B.5. In this way, the parties to the dispute have a right to a hearing where there has been no resolution. The committee makes a report and recommendation to the Principal, who decides the issue. The Principal's decision can be reviewed by the President and ultimately the College board.

If the Principal is involved in the first steps, he should not be responsible for later making a decision on discipline after a committee hearing.

The College did not achieve a resolution under the Student Grievance Procedures because the complainant did not agree with its proposed discipline.

While the Principal did not receive the complainant's letter outlining her disagreement within the time requested, he and the Dean had good reason to believe that she would not agree with their proposal. According to the Dean, when she and the Principal met with the complainant on October 25, 1991, the complainant told them that the suggested discipline did not sound acceptable, but that she wanted some time to think about it. The Principal said that he was not positive that she would agree. Further, the complainant was given a short period of time in which to respond to the Principal's letter of October 30, 1991, which confirmed and outlined the proposal.

In these circumstances, it was unfortunate and inappropriate for the Dean and the Principal to schedule meetings with the respondents on the morning of November 7, immediately following the 'deadline' of November 6. Both the Dean and the Principal advised us that, had they known of her stated disagreement, they would not have considered the matter resolved, and they would have struck a committee. Because of the difficult nature of the complaint, and the fact that they should have known that she may have disagreed,

it would have been prudent for either the Dean or the Principal to have contacted the complainant before concluding the matter, even though the date on which she was to have responded had passed.

If a committee had been struck, and the Principal had not been involved in attempting a resolution, the matter could have been heard by an impartial body, and some determinations and recommendations could have been made after hearing evidence and representations from all sides. Regardless of the ultimate result and punishment imposed, it is likely that a decision reached after such a process would have been accepted by the parties and the student population.

2. The effect of the College's actions on the parties and on the general campus population

Sexual harassment is a serious issue. The advertisement which was published in the Gleaner was offensive. It was offensive whether or not it was the intention of the writers to harass, abuse, or assault the complainant, and it is understandable that such material was particularly offensive to her.

Based upon our interviews with those involved in this matter, we have concluded that the College handled this complaint in a manner which was so ineffective, that every individual who had contact with the process was damaged in some way, particularly the complainant. Because of this, the College administration lost credibility with respect to its ability to deal with the matter.

Once this lack of credibility was perceived by others, the issue took on an ever expanding role. Students with political interests began to actively campaign against the administration. The students, through the Womyn's Steering Committee and ultimately through the Students Union, used this complaint as a means for them to bring the broader issues of sexual harassment, gender bias and feminism into the public eye. They were assisted by the media.

While student protest is a healthy and expected response to many issues which arise on a campus, it was our observation that many of those who were involved in this matter failed to recognize that a fair process involves an opportunity for all sides in a dispute to be heard by an impartial decision-maker. This does not always mean that an oral hearing is required. However, in this case, the complaint had not been resolved. No one was given an opportunity to be heard by a committee. And even if they had, because the Principal had been involved in the attempt to resolve the complaint, any decision by the Principal, on a recommendation from a committee, would likely have had little credibility. Each person who was involved in the dispute felt that the College did not adequately consider his or her views. And ultimately, there was no adequate remedy. For these reasons, it is our opinion that the rules of administrative fairness were breached.

Generally, where there are such substantial procedural errors, the results achieved by such a process are questionable. In such circumstances, this office often recommends that a new process be initiated (such as a new hearing) and that the authority reconsider its decision. However, in this case the discipline has already been imposed. With the exception of giving an apology, the second respondent complied with the discipline and the first respondent was suspended for his failure to attend the counselling sessions. Other than the first respondent's internal appeal, no legal remedies were sought on this issue by either respondent. While some of the parties expressed to us an interest in having the matter heard at a properly convened hearing, it is our view that at this late stage, a new hearing would not be appropriate.

At this point, a comment should be made about the composition of the committee which heard the first respondent's appeal on March 13, 1992. As a general rule, committee representatives should be impartial, unbiased and not directly or indirectly involved in any of the issues in an appeal. When this committee was struck, the student representative who remained on the committee was one of the students who had been arrested after the sit-in. She had been involved in the matter and had expressed her interest publicly. While we found her to be sincere, and despite the fact that no one objected at the hearing, it is our view that her presence on this committee was not suitable.

It is hoped that this case will stand as an example of the devastating effects that a lack of fair process can have on individuals.

3. Did the Student Grievance Procedures provide an effective way to resolve a sexual harassment complaint?

In general, the Student Grievance Procedures did not provide an effective way to resolve a sexual harassment complaint. However, as stated earlier, if the procedures had been followed in this case, a hearing before an impartial committee could have been effective in dealing with this particular complaint.

A committee does not have the authority to make a decision; it can only recommend. This can create procedural problems because of the necessary involvement of the Principal in some matters. We have already described the problem which arises if the Principal is involved in the initial steps (investigation, informal resolution and then referral to a committee if necessary).

The Grievance Procedures allow the Principal to be involved in the initial steps where a complaint is made against the Dean. However, the Principal retains the authority to make the ultimate decision after a committee makes a recommendation. If a complaint is made against the Principal, the President makes the decision.

These problems could be avoided if the person who makes the decision is never permitted to be involved in the initial steps. It may also be more appropriate for the committee to have the authority to make the decision, and for the Principal (or alternatively, the President) to have the responsibility to implement it.

The Grievance Procedures do not appear to give a party a right to be represented by a lawyer at a hearing before a committee. Complaints about sexual harassment are serious matters, and legal representation should be permitted.

We were advised that these procedures were designed to deal with general grievances between students and faculty. They were not designed to deal specifically with complaints about sexual harassment, particularly when the disputes are between students. The procedures do not provide any guidance to the Dean as to how to investigate and attempt to resolve a sexual harassment complaint. These issues can be very difficult to resolve and do require a person with specialized training and experience.

An important objective of any sexual harassment policy is to effect a change in behaviour by those who are harassers. Information and education about this issue are very important. The Student Grievance Procedures do not provide any method by which such an educational function can be carried out.

4. <u>The new procedures adopted March 19, 1992</u>

As stated previously, the College spent some time developing a harassment policy, which became effective on November 13, 1990. Until March 1992, they had not established specific procedures to assist in carrying out that policy.

It should be noted that the majority of employees at the College are members of a union. Because of this, the College has the added obligation to ensure that its harassment policy is coordinated with the grievance procedures and sexual harassment clauses contained in the relevant collective agreements.

In our view, the presence of an office dedicated to assisting complainants is very important if an institution is to have any impact on the awareness of those who are part of a campus, whether they are potential complainants or potential respondents. The creation of the office of Harassment Issues Advisor in the College's new policy is a welcome improvement.

It appears to be recognized that those who have the responsibility to handle complaints of this nature must have a thorough understanding of the nature of harassment and its effects, as well as procedural fairness.

The College's Harassment Policy and Procedures, which was approved by the Board on March 19, 1992 is attached as Appendix D. The policy governs both general harassment and sexual harassment. The definitions of harassment and sexual harassment are similar to those contained in the November 1990 policy.

Definition of Harassment

The definition is fairly broad and quite standard, when compared to other policies. It appears that the only example which would apply to sexual harassment between students would be section 2(d)(iv). **In light of the complaint involved in this investigation, we recommend that the College include, as an example of sexual harassment, the distribution or publication on a campus of written material which could reasonably be interpreted to be threatening or intimidating in a sexual way.**

The Harassment Issues Advisor

The College hired a Harassment Issues Advisor on February 1, 1992. This person is a lawyer who has had experience and interest in the area of human rights. We will refer to the position and the person as the "Advisor".

In the first three months, the Advisor received 35 contacts from people seeking advice and information about harassment and the office of the Advisor. These contacts were fairly evenly spread among the three College campuses. Of those contacts, 17 were complaints. However, no one has yet chosen to proceed through the new procedures.

The Advisor does not presently have an office on any of the campuses. She has an office located off-campus, and she arranges to meet with complainants at the campus they are attending. As stated above, it is our view that the presence of a harassment office on each campus is important in order to increase and promote awareness of these important issues. **Therefore, we recommend that the College take steps to create such an office on each of its campuses.** We have been advised that the College is already taking steps to do this.

The Advisor's role is to be independent and neutral, but supportive. The policy is not based on an advocate's model, but on an ombudsman's model.

College Committee on Harassment Policy and Procedure

This committee has 17 members, with representation from each campus. There are 6 student members. The Advisor is also a member. This committee was responsible for drafting the current policy and procedures, and its on-going role will be to conduct reviews of the policy where appropriate, to provide panels for

appeals from a decision of the Advisor where a complaint is rejected and to provide a member to chair hearing panels.

Publication of the Policy and Procedures

The present policy and procedures are not written in plain language. They should be. Further, we recommend that the College publish pamphlets describing the policy and procedures in a simple, abbreviated format. Diagrams or flow charts could be useful illustrations. We were advised that the College is working on creating such a pamphlet and that the policy and procedures will be published in the Student Handbook. They are also designing posters, which will assist in promoting awareness, especially among those students for whom English is a second language.

Campus Contacts

The procedures provide for the appointment by the Advisor of "campus contacts". These are people who are located on each campus, who are to be available to discuss options with complainants and to explain the policy and procedures. They do not record or attempt to deal with a complaint; their role is educational, and to provide information to complainants, particulary those for whom English is a second language. Complainants who wish to proceed further are referred to the Advisor.

This option was included in the procedures because of the three campuses which fall under the College's jurisdiction, and the fact that there is one Advisor. No one is required to approach a campus contact; complainants have the choice to contact the Advisor directly.

The campus contacts are chosen from a representative group and are trained by the Advisor. The Advisor will be able to receive reports from these contacts so that statistical information can be collected.

The Advisor's Functions

The Advisor informs complainants about the policy and procedures, as well as other external remedies which may be available to them. She assists complainants to prepare and file a written complaint if they choose to proceed under the policy.

Complainants may choose to proceed by informal resolution, mediation or formal resolution. They may withdraw their complaint at any time.

Where a written complaint is received, the Advisor conducts an investigation. She is required to notify the respondent and to

provide him or her with a copy of the complaint. She will also interview the respondent, and any witnesses.

Some harassment procedures separate the investigation function from the advisor's function. This is necessary where the advisor is acting as an advocate. However, the lack of separation in this policy is consistent with the neutral, ombudsman model.

We do not have any specific observations to make about the choice of model for this policy. It will be interesting for the various colleges and universities to discuss the advantages and disadvantages of their respective policies at various times through the next few years.

After the investigation, the Advisor has the authority to reject a complaint. It is anticipated that this authority will usually be used where a case does not fall within the definition of harassment in the policy. There is a right of appeal to a three-member panel chosen from the College Committee on Harassment Policy and Procedures.

Where a complaint is accepted, the complainant and the respondent may choose to have the matter informally resolved by the Advisor or mediated by an independent mediator. Where there is no agreement, the complaint has to be resolved formally.

Informal Resolution by the Advisor

It is contemplated that the Advisor will have a degree of flexibility. She may meet with the parties, either separately or together. A resolution may take the form of a written apology or an agreement to change behaviour.

The parties are entitled to reflect on the resolution for one week. Each must then confirm in writing that he or she agrees with the resolution. We recommend that the College monitor this particular requirement carefully for the first year in order to assess its effectiveness.

Mediation

The parties may agree to go to mediation directly or after an unsuccessful attempt at informal resolution. The Advisor selects a mediator from a pool of trained people, with the agreement of the parties. Again, a reflection period of one week applies where there has been a mediated settlement. We recommend that this also be monitored.

It is our understanding that mediation does not work well in cases where there is a power imbalance between the parties, or where the respondent attempts to use mediation as a forum to prove his or her innocence. It is hoped that the Advisor will be able to make

recommendations to the parties to a dispute as to whether mediation would be appropriate. Further, it is anticipated that a trained mediator would recognize such problems and be able to deal with them or refer the parties back to the Advisor, who would then refer them to other available options.

Formal Resolution

There are two options. Where the parties agree, a complaint may be directed to the President. It is anticipated that this option would be chosen where there are not significant factual disputes and the parties want a speedy resolution.

The President does not conduct an oral hearing. The parties submit written submissions only. The Advisor can assist each party by advising what information should be included in a submission. It is not clear if the President can interview witnesses or the parties if he thinks it would be appropriate. The Advisor does not submit a report. It is not stated whether the President has access to the Advisor's files, but we were advised that this was not contemplated.

If this option is to work effectively, the procedures need to be clarified. There is potential for the Advisor to be placed in a difficult position. However, it is our observation that this option creates an additional procedural mechanism which may be unnecessary. **Therefore, we recommend that this option be deleted from the policy in order to simplify the process.** We have been advised that the Committee on Harassment Policy and Procedure is presently considering this.

The second option is to proceed to an oral hearing before a five-person panel. The members are nominated by the President from a list of people representing five groups: union, administration, faculty, student and the Committee on Harassment Policy and Procedure (excluding the Advisor). Wherever possible, the panel members will be from a campus other than the one where the complaint originated. The Committee representative is the Chair.

The only screening of complaints is by the Advisor who, earlier in the process, determines if a complaint falls within the definition of harassment or sexual harassment. Thereafter, a complainant has a right to an oral hearing.

The parties are entitled to bring a "companion" to the hearing, but that person is not entitled to speak or participate. The companion may be a lawyer. However, the policy is unclear about this. In our view, parties should have a right to be represented by a lawyer or other advocate, particularly where the complaint involves a serious allegation. **We therefore recommend that the College reconsider this provision, and provide that each party has a right to be represented by counsel or another advocate, who is entitled**

to participate in the hearing. We have been advised that this is presently under consideration by the Committee on Harassment Policy and Procedure.

The Advisor is also entitled to attend the hearing. Her role in doing so is to give advice to the panel about the policy and procedures. She does not attend as a support person for the complainant.

The panel does not have to apply the rules of evidence which would apply in a court. It hears relevant evidence, decides the facts and determines a resolution or penalty. It must make a decision within 20 days after the hearing. It must give written reasons to each party, the Advisor and to the President. The President implements the decision.

Either party can appeal the decision to the President within 10 days. Because of this, the President cannot implement a decision until the time for appeal has expired.

The time limits are guidelines only.

General Structure

The policy and procedures are quite complex. In an effort to provide a variety of ways to resolve these disputes, the College has adopted a procedural mechanism which is difficult to follow. It would be more streamlined if the policy were based upon three general "streams":

1. Initial screening by the Advisor, with an appeal to a committee;

2. Informal resolution by the Advisor or mediation by an independent mediator; if either are unsuccessful the matter would proceed to a hearing before a committee if the complainant agrees;

3. Formal resolution by a committee, with a right of appeal to the President and ultimately to the full College Board.

We recommend that the Committee on Harassment Policy and Procedure review the general structure of the policy with a goal to simplifying the process as outlined above.

Records

The policy does not specify what records are to be kept. There is a provision which says that

> Any records, reports, or documents generated as a result of a complaint will be filed and maintained by the ... Advisor or, in the event the ... Advisor position is vacant, will be maintained in a confidential fashion in the office of the President.

The system is complainant driven. This means that no action is taken against a respondent unless a complainant chooses to proceed with a formal complaint.

In practice, the Advisor keeps notes of all complaints.

It is important to acknowledge that many complainants do not wish to come forward with a formal complaint, for many valid reasons. For example, a person who has been hurt by harassment may want to do something about it, but may feel emotionally incapable of proceeding through the complaints process. He or she may not be able to confront the respondent. However, the person may wish to consult with the Advisor to get information or to just discuss the matter.

The College has not clearly addressed the issues which arise where this kind of information is kept, particularly information about those complaints which do not proceed. Some of these issues are:

* If later complaints are received about the same respondent, can the Advisor contact the earlier complainants to advise them that there have been other complaints and inquire whether they would be prepared to proceed?

* When is the respondent notified? Is he or she advised of only written complaints?

* Who has access to these files?

The policy requires information to be destroyed "...as required by the provisions of any relevant collective agreement or within a period of four years." It is not clear which provision prevails, and "within four years" is not specific. Further, four years may not be enough time to develop "institutional memory".

We recommend that the Committee on Harassment Policy and Procedure review these issues carefully and develop clear policy about what records are kept and for what period of time, how those records are managed, and what information is available to parties and others.

Confidentiality

The policy provides that the College

> ... will make every effort to keep confidential any information concerning an allegation of harassment or an incident of harassment.
>
> In certain circumstances, the resolution of an incident or incidents of harassment may entail the disclosure, by the College President or delegate, of information regarding the incident of harassment.

Complainants may be reluctant to lodge legitimate complaints if there is a possibility that the information will not remain confidential. Respondents should have protection from inappropriate disclosure. The system must protect the privacy of individuals and it must have the confidence of those who use it. The system should encourage the parties to be open and forthright. This is why the procedures used to resolve these types of complaints are private.

The current provisions about records and confidentiality do not, in our view, provide enough protection of privacy. Names should not be disclosed. The Advisor's records should be kept strictly confidential. They should not be accessible to anyone, including the President. Special considerations may have to apply in the event of a vacancy in the position.

However, general information about complaints which have been determined through the formal hearing process should be accessible to the public, subject to privacy considerations, such as the identity of the parties. The College may want to be able to answer questions about incidents which may have surfaced in other ways, but it should be able to refer such questions to the Advisor. The Advisor should have some discretion to disclose general information about complaints, whether or not they have been through a formal hearing.

We therefore recommend that the Committee on Harassment Policy and Procedure review the current provisions about records and confidentiality in order to clearly address protection of privacy and access to information concerns.

Third Party Complaints

A complaint can be initiated by a third party where the complainant agrees. The policy says that the third party does so "on behalf of the person who has been harassed". The complaint proceeds in the same way as other complaints. It is not clear who is the "party" to the proceedings in such circumstances. This is significant in the hearing process, where only a party is entitled to be accompanied by a companion. We recommend that this provision be clarified.

Retaliation

Retaliation against a complainant may also constitute harassment. This is an important protection.

Range of Discipline

The policy states in general terms that the range of resolutions include a mediated settlement or disciplinary measures "up to and including dismissal or expulsion". There are no guidelines or examples provided. We were advised that the reason for this was to give the Advisor, a mediator, the President and a hearing panel sufficient flexibility to achieve resolutions in a practical and perhaps creative way. While we appreciate a need for flexibility, we also think it is important for those who are subject to these procedures have an idea what is at stake. A general statement is important, but we would also recommend that the College consider providing a general range of disciplinary options.

We also recommend that the Advisor keep a record of all resolutions and disciplines imposed to provide general and statistical information, as well as a set of precedents. This information should be published in general terms in periodic reports by the Advisor.

Conclusions

The new policy is a significant improvement. It is too soon to determine how effective it will be. It is based on sound principles. It will be important for the College to carefully monitor the process and undertake an evaluation at least every year.

E. SUMMARY OF RECOMMENDATIONS

With respect to the new Harassment Policy, we recommend:

1. that the definition of sexual harassment should include as an example, the distribution or publication on a campus of written material which could reasonably be interpreted to be threatening or intimidating in a sexual way;

2. that the College take steps to create a Harassment Office on each campus;

3. that the policy and procedures be written in plain language;

4. that the College publish pamphlets which describe the procedures in a simple, abbreviated format;

5. that during the first year, the College monitor the use of the

"reflection periods" which apply to informal resolutions and mediation in order to assess their effectiveness;

6. that the procedures for formal resolution by the President be eliminated;

7. that the Committee on Harassment Policy and Procedure review the structure of the policy with a view to making amendments which would simplify the process;

8. that the policy provide that each party in an oral hearing has a right to be represented by a lawyer or other advocate, who is entitled to participate in the hearing;

9. that the Committee on Harassment Policy and Procedure develop clear policy about what records are kept and for what specific period of time, how those records are managed and what information is available to parties and others;

10. that the Committee on Harassment Policy and Procedure review the current provisions about records and confidentiality in order to clearly address protection of privacy and access to information concerns;

11. that the process for dealing with complaints made by a third party be clarified;

12. that the policy include a general range of disciplinary options;

13. that the Harassment Issues Advisor keep a record of all resolutions and disciplines imposed to provide general and statistical information, as well as a set of precedents, which should be published as general information in periodic reports.

(A)

VANCOUVER COMMUNITY COLLEGE
POLICY AND PROCEDURES MANUAL

Policy No.: 2.1.0.3
Issue Date: May 6, 1981
Amendment: Original
Source: College Board
Title: STUDENT GRIEVANCE PROCEDURES
Concerning: Faculty, Staff, Administration, and Students
President Approval:

POLICY:

A.1 Vancouver Community College shall provide procedures affording individual students the opportunity to register and to resolve grievances or disputes.

A.2 This policy shall not be activated where more specific appeal procedures such as those provided for appeal of grades or evaluation are applicable.

A.3 If a dispute or grievance is taken to an agency outside the College then the College reserves the right to suspend action under this policy and procedure.

A.4 For the purpose of this policy a student is understood to be either a person who is currently enrolled at the College or a person who was so enrolled until 30 days prior to the filing of this grievance or dispute with the Dean of Administrative and Student Services.

PROCEDURES:

B.1 Students, either directly, through the campus ombudsperson, a student council representative, or a counsellor, may record with the Dean of Administrative and Student Services at the campus with which they are associated any grievance or dispute, provided other specific appeal procedures are not applicable.

B.2 The Dean of Administrative and Student Services shall advise the griever(s) that since the Dean may be involved in a later review of the grievance or dispute the griever(s) may wish to initially present the grievance for attempted resolution to another administrator on campus, excluding the Principal who may also be involved in a subsequent review.

B.3 The Dean of Administrative and Student Services or other campus administrator so chosen by the griever(s) shall hear such grievances and disputes and shall, within one week from the date when he/she is first advised of the grievance or dispute:

a) become familiar with details of the grievance or dispute;

b) attempt to resolve the grievance or dispute;

c) report the existance of the grievance to the Principal.

B.4 In the event that the grievance is against the Dean of Administrative and Student Services, the Principal will act in place of the Dean in B.1, B.2, B.3, and B.5.

B.5 Failing resolution under B.3, the Dean of Administrative and Student Services, acting as chairman, shall strike a committee consisting of an instructor recommended by the Association of Instructors, a counsellor named by the Counselling Department and a student recommended by the Student Society of the campus. This committee shall review the matter and decide all questions of procedure in a manner which is consistent with this policy and procedure.

a) The griever(s) has the right to appear before the committee to make a submission.

b) The person(s) against whom the grievance is made has the right to appear before the committee to make a submission.

c) Either party may have witnesses appear on its behalf, the number of such witnesses to be at the committee's discretion.

d) Either party may be represented by one advisor who is either a college student or college employee. More than one advisor, or an advisor external to the college may be allowed only at the discretion of the chairman.

e) The committee may request the presence of any resource person or witness that the committee thinks appropriate.

B.6 In the case of the inability of anybody to name a representative, the Principal may make the committee appointment.

B.7 By written report, the chairman of the committee shall advise the Principal of the committee's recommendation.

B.8 All parties shall commit their best efforts to the completion of steps B.5, B.6, and B.7 within a period of three weeks.

B.9 The decision of the Principal will be communicated in writing to the griever(s) and the committee within one week of the receipt of the committee's recommendations. The Principal's decision is normally final but may be reviewed by the President and, subsequently, the College Board if so requested by either of the parties.

B.10 In the event that the grievance is against the Principal, "President" shall replace "Principal" in B.6, B.7, and B.9.

B.11 Time limits may be extended by written mutual agreement.

B.12 Students in the Continuing Education Division may record with the Director of Continuing Education Division a grievance or dispute to be followed, if necessary, by due process as indicated in the procedures above as applicable and modified in accordance with Continuing Education organization.

B.13 The existance of these procedures will be made known to students through the calendar and other appropriate College publications, such publications to point out that while the vast majority of students complete their college work without experiencing any major difficulty, this procedure is provided to deal with any grievances or disputes concerning human rights, e.g., allegations of sexual harassment, racial or religious discrimination.

(B)

VANCOUVER COMMUNITY COLLEGE

POLICY AND PROCEDURES MANUAL

Policy No.: 2.3.0.4
Issue Date: June 29, 1981
Amendment: No. 1
Source: Academic Council
Title: LANGARA - STANDARDS OF STUDENT CONDUCT
Principal, Langara Campus
Approval:
College President
Approval:

A.1

Students are expected to maintain an appropriate standard of conduct — to obey the law, to respect all persons on campus, to meet their contractual obligations, to maintain integrity in scholastic work, and to evidence mature conduct. The student is held responsible for his/her actions whether acting individually or as part of a group.

INITIATION OF DISCIPLINARY ACTION

A.2

Failure by students to maintain appropriate standards of conduct may result in the initiation of disciplinary action by the College President or his delegate, the Dean of Administrative and Student Services. In the absence of the Dean, his delegate may take action.

A.3

Without limiting the generality of the foregoing, such disciplinary action may be initiated against a student, by the Dean or his delegate, where the student:

(a) fails to meet attendance requirements as stipulated for courses and programs on the Campus generally;

(b) cheats in assignments and/or examinations;

(c) acts in such a way as to significantly interfere with the College operations; disrupts or fails to comply with reasonable directions of the College administration or instructors;
endangers health or safety of staff or students of the College;
damages, defaces, destroys or misuses College property;

(d) possesses, uses or sells intoxicating beverages on the Campus without the permission of the College administration;

(e) possesses, uses or sells drugs on the Campus;

(f) falsifies or defaces any College document or supplies false information to obtain admission to classes;

(g) possesses offensive weapons;

(h) has debts with the College.

PROCEDURES

B.1

(a) Any infractions which are observed by any members of the College should be referred to the Dean of Administrative and Student Services or his delegate for consideration and appropriate action.

(b) Referral should be made to the security guard, police or medical staff, where appropriate.

ACTION BY THE DEAN OR HIS DELEGATE

B.2

Disciplinary action as deemed appropriate by the Dean may be as follows:

(a) a reprimand;

(b) suspension from class for a period of not more than two weeks;

(c) referral to college president for expulsion;

(d) withholding of official transcripts until a debt is paid: those who write "insufficient" fund cheques for fees may have their registration cancelled.

APPEAL BY STUDENTS

B.3

Students may appeal suspension or expulsion by means of student grievance procedures.

(C)

VANCOUVER COMMUNITY COLLEGE

Langara Campus

AN OPEN LETTER FROM THE LANGARA PRINCIPAL REGARDING HARASSMENT ON CAMPUS

In October the College received a complaint from a female student that an advertisement published in "the Gleaner" constituted sexual harassment of her.

The College investigated the allegations, and took the following action against two male students:

- the men received a strong letter of discipline, placed in their permanent student records, indicating that the College will not tolerate behaviour of the type they displayed, and telling them that any similar involvement in the future would result in "very severe action...possibly including dismissal"

- the men were asked to apologise to the female student (one of them apologised in writing shortly after the publication of the ad)

- the men were required to attend some specifically-designed counselling sessions, intended to help them improve their understanding and behaviour in areas related to gender issues.

Attendance at the counselling sessions is mandatory, and the College will take action should they not comply.

The College laid out this course of discipline in the belief that education and resultant behavioural change is its first responsibility, and that a student-focussed response to this incident was called for.

Many people have written to me to express concern about both the specific case, and the College's ability to deal with complaints of harassment in general. While Langara has been active in promoting both women's issues and safety (eg through our Women's Studies program and the night-time escort service to parking lots) it is clear that not nearly enough has been done.

The recent incident has also brought home to many of the people involved, the complexities of handling such matters, and the difficulty of achieving agreement on resolution. In this regard, I wish to set out both the existing policies and proposals for future action.

1. Continued development of an effective harassment policy

In November 1990 VCC stated in its Harassment Policy the College's commitment to providing an environment for work and study which is free from harassment. The policy states that "harassment of any kind is a serious violation of an individual's fundamental rights and therefore a serious offence, which may be subject to a range of disciplinary measures up to and including dismissal or expulsion".

The Harassment Policy was prepared by a College-wide committee including student representatives. Procedures for implementing the harassment policy are presently being prepared by this same committee, as is an educational program for employees and students related to all aspects of harassment.

In the absence of specific procedures for dealing with harassment complaints, the recent incident was dealt with under a grievance procedure - which has proven very difficult to apply in this situation. This experience has reinforced the urgent need for more specific ways of handling such matters.

2. Harassment Advisor

A key part of improving our ability to address harassment concerns will be the hiring of a Harassment Advisor, who will bring to us expertise which is sorely lacking.

VCC is presently advertising, and will fill this position as soon as possible. The Advisor will implement an educational program to help us achieve a harassment-free workplace. The Advisor will also improve the College's procedures for investigating allegations of harassment, and provide necessary support to students and employees.

3. Continued commitment to achieving a harassment-free workplace

I want to reiterate my commitment, and the College's commitment, to ensuring that education can take place free from harassment or threats of harassment. I further wish to emphasize that the College will take very strong action against the perpetrators of substantiated harassment.

Harassment, particularly sexual harassment, and mechanisms for dealing with it will have a much higher profile on campus in the future. Also, we now have improved liaison between women students and the College, and we will be working together to improve the safety of all women on campus. In this regard I wish to encourage continued suggestions from students and employees, and hope that many of you will provide assistance to the Harassment Advisor when the position is filled.

In closing I want to express my personal sadness that the female student involved in this incident has found it necessary to leave Langara because of what she perceives as ongoing harassment of her by a number of men.

It also saddens me that the College's difficulty in dealing effectively with this incident has been interpreted by some people as a reluctance to support women or, worse, an attempt to protect the perpetrators of harassment. This is not the case, and I apologize if my or the College's actions have appeared inadequate. All of the VCC employees I know are committed to having this College be a model in preventing all forms of harassment. We obviously have a long way to go - as does our society.

I hope that that these recent events at Langara will be a platform for improvements in individual rights at all our educational institutions. That at least will be a positive outcome from an extremely distressing incident.

David Cane

David Cane
Campus Principal, VCC - Langara
December 6 1991

(D)

VANCOUVER COMMUNITY COLLEGE
POLICY AND PROCEDURES MANUAL

Policy No.:	1.1.0.7
Issue Date:	November 1991
Amendment:	#1 - March 1992
Source:	College Board
Title:	HARASSMENT POLICY
Concerning:	All Administrators, Faculty, Staff & Student
Cross Reference:	Policy 2.1.0.3
President's Approval:	John Gen. Ireland

POLICY

1. Statement of Principle

Vancouver Community College is committed to the principle that all members of the college community have the right to work and study in an environment which is free from harassment. The College does not condone and will not tolerate harassing behavior which may undermine the dignity, self-esteem, and productivity of any student(s) or employee(s).

The College considers any form of harassment of an individual involved in College activities to be a serious violation of that individual's fundamental rights. Such a violation is a serious offence which may be subject to a range of resolutions including mediated settlement or, in certain circumstances, disciplinary measures up to and including dismissal or expulsion.

2. Definition

(a) Harassment, for the purposes of this policy, is behavior which, generally, is both:

i) discriminatory in nature based on race, national or ethnic origin, colour, religion, union or association membership, age, sex, sexual orientation, marital status, family status, political belief, mental or physical disability or conviction of a criminal offence; and

ii) objectionable because the person committing such behavior knows or ought reasonably to know that the behavior creates an environment unconducive to work or study;

but, in certain circumstances, may be only objectionable.

(b) For the purposes of paragraph 2(a)(ii), objectionable behavior includes, but is not limited to:

i) verbal abuse or threats;

ii) offensive remarks, jokes, innuendos, or taunting;

iii) display of pornographic, racist, or other offensive or derogatory material;

iv) persistent unwelcome invitations or requests, whether direct or indirect;

v) unwelcome physical contact such as touching, patting, pinching and punching; and

vi) psychological abuse such as leering, badgering and intimidating actions.

(c) Harassment may occur during:

i) one incident; or

ii) a series of incidents of which any one incident, considered in isolation, may not constitute harassment.

(d) One specific form of harassment which is covered by this policy is sexual harassment. Sexual harassment may include unwanted sexual attention or sexual solicitation or sexually oriented remarks or behavior. Sexual harassment includes, but is not limited to:

i) implied or expressed promise or reward with respect to a term or terms of employment, academic status, or academic credit, for compliance with a sexually oriented request;

ii) reprisal or implied or expressed threat of reprisal with respect to a term or terms of employment, academic status, or academic credit for failure to comply with a sexually orientated request;

iii) denial of opportunity or the threat to deny opportunity with respect to academic status, academic credit, or a term or terms of employment for failure to comply with a sexually orientated request; and

iv) unwanted sexual attention or solicitation which has the effect of interfering with an individual's work or academic performance, or which creates an environment unconducive to work or study.

The examples above include those circumstances where the person exhibiting the behavior, in fact, does not have the authority to carry out such promise, reward, threat or denial of opportunity.

3. Confidentiality

Subject to the College being required to provide information to any external board or court and subject to a resolution of an incident of harassment which requires disclosing certain information, the College, in addressing alleged harassment and in resolving incidents of harassment, will make every effort to keep confidential any information concerning an allegation of harassment or an incident of harassment.

In certain circumstances, the resolution of an incident or incidents of harassment may entail the disclosure, by the College President or delegate, of information regarding the incident of harassment.

4. Other Policies and Agreements

The application of this policy and these procedures may be modified in specific instances, as is reasonably necessary, by the terms of existing College policies and collective agreements which supersede College policies.

5. Amendments

No substantial changes will be made to this policy or these procedures without first getting the advice of the College Committee on Harassment Policy and Procedures.

PROCEDURES

6. Reporting Harassment

(a) Any College student or employee who believes that she or he is being harassed, has been harassed or has witnessed harassment of another College student or employee is encouraged to make a direct request of the person or persons concerned that the harassment cease or draw to the attention of the person or persons concerned that the harassment did occur.

(b) Any College student or employee, or any individual who has been a College student or employee, who believes that she or he is being harassed, has been harassed or has witnessed harassment of another College student or employee, or any individual who has been a College student or employee, may seek the confidential advice of the Harassment Issues Advisor or of a campus contact.

7. Campus Contact

(a) Campus contacts will be appointed by the Harassment Issues Advisor in consultation with constituency groups on each campus and will include the following:

> a VMREU representative, an administration representative, a faculty union representative, a student association or union representative, a Continuing Education Program representative, or a student or employee of the College who has been trained as provided in paragraph 7(c).

(b) The campus contact's role is to direct the complainant but not to record nor attempt to resolve any details of the alleged incident or incidents. The campus contact will help the complainant by explaining the options available to that person under this policy and these procedures or any other appropriate college policy or any appropriate collective agreement. If the complainant wishes to pursue the complaint further, the campus contact will direct the complainant to the Harassment Issues Advisor.

(c) Campus contacts will be trained for this position by the Harassment Issues Advisor or through the office of the Harassment Issues Advisor.

8. Harassment Issues Advisor

(a) A complainant may contact the Harassment Issues Advisor directly or after consultation with a campus contact.

(b) The Harassment Issues Advisor will advise the complainant on this policy and procedures and all other College policies or any collective agreement relevant to the complainant and, if appropriate, any other remedies external to the College, that may be available to the complainant.

(c) After consultation with the Harassment Issues Advisor, if the complainant wishes to file a complaint under this policy, the Harassment Issues Advisor will assist the complainant in preparing and filing a written complaint as required by these procedures.

9. Complaint of Harassment

(a) After consultation with the Harassment Issues Advisor, the complainant may:

(i) take no further action;

(ii) file a complaint under this policy and, after the completion of an investigation set out in paragraph 9(a), proceed to

- informal Resolution as outlined in paragraph 10, if the respondent agrees
- Mediation as outlined in paragraph 11, if the respondent agrees
- Formal Resolution by the President as outlined in paragraph 12, if the respondent agrees
- Formal Resolution by Hearing as outlined in paragraph 13;

(iii) where appropriate, contact the Human Rights Branch of the provincial government or the Vancouver Police;

(iv) where appropriate, seek legal counsel; or

(v) take any other action available to the complainant in the circumstances.

(b) If the complainant chooses not to take further action or proceed under this policy, the Harassment Issues Advisor will not continue to act on this complaint.

(c) If the complainant chooses a remedy or procedure external to this policy, the Harassment Issues Advisor will not continue to act on this complaint. However, where appropriate and only after the completion of the external remedy or procedure, the complainant may seek the advice of the Harassment Issues Advisor and initiate a complaint under this policy.

(d) If the complainant chooses to file a complaint under this policy, the complaint:

(i) must be in written form;

(ii) must contain the name of the complainant and the respondent;

(iii) must contain details of the incident or incidents complained of, including, dates, places, names of individuals involved or witnessing the incident and any other relevant information;

(iv) must be dated; and

(v) must be signed by the complainant.

(e) Upon receiving a written complaint under this policy, the Harassment Issues Advisor will conduct an investigation of the incident or incidents in the complaint by:

(i) interviewing witnesses, if any, of the complainant;

(ii) notifying, in writing, the respondent of the complaint and providing a copy of the complaint to the respondent;

(iii) interviewing the respondent and encouraging the respondent to comment or reply, in writing, to the complaint; a copy of any written comment or reply of the respondent will be forwarded to the complainant; and

(iv) interviewing the witnesses, if any, of the respondent.

(f) At any time during the investigation or upon the completion of the investigation, the Harassment Issues Advisor may inform the complainant, in writing, that the complaint is rejected and the reasons for the rejection. The complainant may appeal such a decision of the Harassment Issues Advisor to a three member panel appointed from the College Committee on Harassment Policy and Procedures. The Harassment Issues Advisor will inform the Chair of the College Committee on Harassment Policy and Procedures of the appeal and the Chair will appoint the members of the panel. Whenever possible, the Chair will appoint the members of the panel from a different campus than the campus where the incident occurred.

(g) After conducting an investigation set out in paragraph 9(e), the Harassment Issues Advisor will inform the complainant and the respondent, in writing:

that the complaint is accepted and that the complaint will follow

- if elected by the complainant and respondent, the Informal Resolution set out in paragraph 10, or

- if elected by the complainant and respondent, Mediation set out in paragraph 11, or

- if the approval of any party for Informal Resolution or Mediation is denied, the complaint will follow either of the Formal Resolution procedures set out in paragraphs 12 and 13.

(h) For the purposes of an investigation under these procedures and with the prior authorization of the President, the Harassment Issues Advisor will have access:

- in the case of a student, through the appropriate Senior Student Services administrator, or
- in the case of an employee, through the appropriate College administrator

to the telephone number and address of any person who is named as a witness to an incident of harassment or as a respondent in an incident of harassment. The Harassment Issues Advisor will not have access to any other information in the student or employee file.

10. Informal Resolution

(a) Where appropriate and with the consent of the complainant and the respondent, the Harassment Issues Advisor will meet with the complainant and the respondent, either individually or together, with a view to attempt to secure a resolution of the complaint satisfactory to the parties. For example, such resolution may take the form of a written apology, a grade review where appropriate, a change in behavior, or any other resolution agreeable to the parties.

(b) If the resolution is successful, a reflection period of one calendar week will follow. During this time either party may withdraw from the tentative resolution. During or at the end of this reflection period, each party will indicate her/his agreement in writing to the resolution. When the resolution has been agreed to in writing by both parties, the complaint will be considered closed and the Harassment Issues Advisor will cease to act on the complaint.

(c) If the resolution fails to success or either party withdraws from the resolution either expressly or by failure to sign the agreement set out in paragraph 10(b), the complaint will:

(i) with the consent of the complainant and the respondent, proceed to Mediation;

(ii) if one of the parties does not consent or if the Harassment Issues Advisor feels that Mediation will not succeed, proceed to either of the Formal Resolution procedures set out in paragraphs 12 and 13; or

(iii) not proceed if the complainant chooses not to proceed beyond this point.

11. Mediation

(a) The Harassment Issues Advisor will select a mediator, who is independent of the College, and receive agreement from the complainant and the respondent on the choice of the mediator.

(b) Subject to the agreement of the choice of the mediator set out in paragraph 11(a), within thirty days of the appointment of the mediator, the mediation of the complaint will be concluded.

(c) If the mediation is successful, a reflection period of one calendar week will follow. During this time either party may withdraw from the tentative resolution. During or at the end of this reflection period, each party will indicate her/his agreement in writing to the mediated resolution. When the resolution has been agreed to in writing by both parties, the complaint will be considered closed and the Harassment Issues Advisor will cease to act on the complaint.

(d) If the mediation fails to succeed, or if either party withdraws from the tentative resolution expressly or by failure to sign the agreement set out in paragraph 11(c), or the complainant and respondent fail to agree on a mediator, the complaint will:

(i) proceed to either of the Formal Resolution procedures set out in paragraphs 12 and 13; or

(ii) not proceed if the complainant chooses not to proceed beyond this point.

12. Formal Resolution Procedures

(a) If the complaint is not resolved through Informal Resolution or Mediation, the complaint will proceed to formal resolution by either:

i) a hearing under paragraph 13; or

ii) where both parties agree, the complaint will be directed to the President for resolution.

(b) In the event that the parties direct the complaint to the President for resolution, the President will review the complaint and the written response of the respondent, if any, and all other relevant material to the complaint and, within 10 working days, will make a decision on the complaint, which may include discipline of the respondent or dismissal of the complaint.

(c) The reasons of the President will be made in writing and copies will be delivered to:

i) the complainant;

ii) the respondent; and

iii) the Harassment Issues Advisor.

13. Hearing

(a) If a complaint proceeds to Formal Resolution and the parties do not agree to direct the complaint to the President, the Harassment Issues Advisor will notify the President of the complaint and that the matter will proceed to a hearing. The President will form a Hearing Committee whose members will be nominated from the following constituency groups and, whenever possible, from a campus other than the campus where the complaint originated:

a VMREU representative, an administration representative, a faculty union representative, a student association or union representative, a member of the College Committee on Harassment Policy and Procedures.

(b) The member of the College Committee on Harassment Policy and Procedures will be the Chair of the Hearing Committee. The Chair will be responsible for the conduct of the hearing. The Chair will not have a vote on a decision of the Hearing Committee, except in the event of a tie vote when the Chair will have one vote to break the tie vote.

(c) The Harassment Issues Advisor will forward to the Chair a copy of the complaint and a copy of the reply of the respondent, if any, for distribution to the members of the Hearing Committee.

(d) The Chair will set the date of the hearing within 10 working days of the formation of the Hearing Committee and will inform the complainant and the respondent of the date of the hearing and the names of the members of the Hearing Committee.

(e) The hearing will be conducted in a manner consistent with the requirements of natural justice, so as to give those involved a full and fair hearing. The burden of proof will be the balance of probabilities.

(f) The hearing will be conducted in private unless both the complainant and respondent otherwise agree.

(g) Subject to paragraph 11(h), each party may be accompanied by a companion who may not speak or participate in the hearing. The Harassment Issues Advisor may attend the hearing for the purpose of advising the Hearing Committee on this policy or these procedures.

(h) If either party requires an interpreter or an aide:

- with the prior approval of the Chair, the interpreter or aide may attend the hearing; and
- the party requiring the interpreter or aide may speak through the interpreter or aide.

(i) The Hearing Committee may admit such evidence as it deems necessary and appropriate. The Hearing Committee is not bound by the rules of evidence that apply in judicial proceedings; though in deciding what evidence it will admit the Hearing Committee may take those rules into account.

(i) The Hearing Committee has the jurisdiction to:

i) make findings of fact;

ii) decide if, on the facts, the complaint is justified; and

iii) determine a resolution, including a penalty, that is appropriate in the circumstances.

(j) The Hearing Committee has 20 working days from the date of the conclusion of the hearing to reach its decision.

(k) The Hearing Committee will give reasons for its decision in writing and the Chair will send a copy of the reasons of the Hearing Committee to the President for implementation of the decision. In addition, the Chair will sent copies of the reasons of the Hearing Committee to the following:

i) the complainant;

ii) the respondent; and

iii) the Harassment Issues Advisor.

(l) Either the complainant or the respondent may appeal the decision of the Hearing Committee to the President within 10 working days after receiving the reasons for decision. Within a reasonable time, the President will render a decision on the appeal.

14. Complaints Initiated By Third Party

(a) Any College student or employee, or any individual who has been a College student or employee, who witnessed harassment of another College student or employee, or any individual who has been a College student or employee, may initiate a complaint on behalf of the person who has been harassed, provided the complainant has the consent of the person who has experienced the harassment.

(b) A complaint under this procedure will follow the same format and the same resolution procedures as a complaint made pursuant to paragraph 9.

(c) The consent of the person who experienced the harassment must be present at all times. If that person withdraws her/his consent then the complaint will be considered closed and the Harassment Issues Advisor will cease to act on the complaint.

15. Records of Complaint

(a) Any records, reports or documents generated as a result of a complaint will be filed and maintained by the Harassment Issues Advisor or, in the event the Harassment Issues Advisor position is vacant, will be maintained in a confidential fashion in the office of the President.

(b) Subject to paragraph 15(c), such files will be confidential and will be destroyed as required by the provisions of any relevant collective agreement or within a period of 4 years.

(c) As part of a resolution of a complaint under this policy and these procedures, a permanent or temporary record or report of the complaint and resolution may be noted or filed on the respondent's student or employee file.

16. Retaliation

Retaliation against an individual who has filed a complaint or who has been named as a witness or respondent in a complaint, whether the complaint was substantial or not and whether the complaint was resolved through any of the procedures set out in this policy and these procedures or not, may itself become an incident of harassment and may result in disciplinary action by the College.

17. Time Limits

It is recognized by all parties that time is important and is of the essence. Therefore, every effort will be made to comply with the time limits indicated in these procedures. However, these time limits are not binding on the College and may be modified as is reasonably necessary to accomplish the purposes of this policy and these procedures.

18. Interpretation

In order to accomplish the purposes of this policy and these procedures, wherever the singular is used in this policy and these procedures it may be construed as if the plural had been used and wherever the plural is used it may be construed as if the singular had been used.

19. Appeals

Nothing in this policy or these procedures limits the rights of an individual disciplined under this policy and these procedures to avail herself/himself of existing avenues of appeal in any collective agreement or according to the College and Institute Act.

20. Reports of the Harassment Issues Advisor

(a) The Harassment Issues Advisor will report on the Harassment Policy and Procedures on a quarterly basis to the President of the College and will table a copy of that report with the College Committee on Harassment Policy and Procedures.

(b) The quarterly reports of the Harassment Issues Advisor will include statistics of:

- how many people contacted the Harassment Issues Advisor
- how many complaints were filed

- the form of discrimination described in the complaints, such as sexual or racial discrimination
- how many complainants were students, employees
- how many respondents were students, employees and
- any other statistic that the Harassment Issues Advisor feels may be useful to the College.

(c) As confidentiality is a vital component of this policy and these procedures, the quarterly reports of the Harassment Issues Advisor will not identify the names of parties to a complaint of harassment. The Harassment Issues Advisor will not provide statistics which may identify parties to a complaint of harassment.

Contact: Barbara Fisher
Vancouver - 660-1366

Ombudsman
Fairness for all in British Columbia

News Release

FOR IMMEDIATE RELEASE **July 24, 1992**

2:00 p.m.

Acting Ombudsman Brent Parfitt today released Public Report No. 29, A Complaint about the Handling of a Sexual Harassment Complaint by Vancouver Community College, Langara Campus.

This matter was referred to the Ombudsman in March, 1992, following a series of events which took place at Vancouver Community College between October, 1991 and March 1992. The incident which formed the basis of the sexual harassment complaint was the publication of an 'unclassified' advertisement in an independent student newspaper, which was published and distributed at Langara campus.

The scope of the Ombudsman's investigation was as follows:

* The office did not investigate the merits of the specific complaint or the adequacy of the punishment which was imposed by the College. Because of this, the report does not make any recommendations which are specific to the case.

* The office examined the adequacy of the procedures which were available to the College at the time of the complaint, and the adequacy of the new procedures for dealing with sexual harassment complaints which were developed recently. The report makes recommendations for improvements to the new policy and procedures.

* In order to assess the procedures and put the investigation into context, the office examined the process used by the College to investigate and deal with this complaint, and whether the procedures in place at the time were followed. The office also examined how the parties involved were affected by the manner in which the complaint was handled.

The report makes the following conclusions:

* In general, the procedures which were in place during this time did not provide an effective way to resolve a sexual harassment complaint.

* The College administration did not follow its procedures in two significant ways, which are described in detail in the report.

* Despite the general inadequacy of the procedures which were in place, had the College administration followed those procedures properly, it could have resolved this particular dispute in a fair manner.

* The new procedures, which were put into place March 19, 1992 are a welcome improvement. While it is too soon to determine how effective they will be, they are based on sound principles.

Some of the recommendations made are:

* That the College take steps to create a Harassment office on each campus;

* That the policy and procedures be written in plain language;

* That the Committee on Harassment Policy and Procedure review the structure of the policy with a view to making amendments which would simplify the process;

* That the Committee on Harassment Policy and Procedure develop clear policy about what records are kept and for what specific period of time, how those records are managed and what information is available to the parties and others;

* That the Committee on Harassment Policy and Procedure review the current provisions about records and confidentiality in order to clearly address protection of privacy and access to information concerns;

* that the Harassment Issues Advisor keep a record of all resolutions and disciplines imposed to provide general and statistical information, as well as a set of precedents, which should be published as general information in periodic reports.

It is hoped that this report will provide useful information to educational institutions who already have or are in the process of developing policies and procedures to deal with harassment and sexual harassment complaints.